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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
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In the matter of:

Docket No. S-20600A-08-0340

MARK W. BOSWORTH and LISA A.
BOSWORTH, husband and wife;STEPHEN G. VAN CAMPEN and DIANE V.
VAN CAMPEN, husband and wife;MICHAEL J. SARGENT and PEGGY L.
SARGENT, husband and wife;ROBERT BORNHOLDT and JANE DOE
BORNHOLDT, husband and wife;MARK BOSWORTH & ASSOCIATES, LLC, an
Arizona limited liability company;3 GRINGOS MEXICAN INVESTMENTS, LLC, an
Arizona limited liability company;

Respondents.

RESPONDENTS MICHAEL J. AND
PEGGY L. SARGENTS' REPLY IN
SUPPORT OF
12(b)(6) MOTION TO DISMISS THE
ALLEGED VIOLATIONS OF
A.R.S. § 44-1991

(Oral Argument Requested)

Respondents Michael J. and Peggy L. Sargent ("Respondents"), hereby file their Reply in Support of Motion to Dismiss (the "Reply") pursuant to, *inter alia* and without limitation, Ariz.R.Civ.P. 9(b) and 12(b)(6).¹ This Reply is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Securities Division ("the Division") argues Respondents' Motion should be denied because: (A) Ariz.R.Civ.P. Rule 9(b) does not apply to the case, (B) there is no authority for the

¹ Respondents, in filing the Reply to the Motion, which is incorporated herein by reference, do not concede that the alleged investment contracts and promissory notes at issue constitute a "securities," as the term is defined under applicable statutes and case authority, and reserve the right to challenge any such assertion by the Securities Division.

1 proposition that securities fraud claims must be stated with more than mere notice pleading; and
2 (C) the Division's Notice is legally sufficient and states a claim under A.R.S. § 44-1991. The
3 Division is wrong.

4 As discussed in the Motion and this Reply, case law has established the applicability of
5 9(b) in all averments of fraud, including the Division's A.R.S. § 44-1991 claims against
6 Respondents. In addition, Arizona's Rules of Civil Procedure do apply in cases, such as this one,
7 where applicable Administrative Rules are silent on procedure or law. Because the Division's
8 Notice fails to comply with Rule 9(b)'s pleading requirements, which applies in this action,
9 Respondents' Motion should be granted or, alternatively, the Division should be ordered to file an
10 amended Notice that contains the requisite specificity.

11 **II. ARGUMENT**

12 **A. Case Law Mandates the Application of Rule 9(b) in Securities Fraud Claims.**

13 The Division asserted claims against Respondents for securities fraud under A.R.S. §
14 44-1991. Notice at p. 5. A.R.S. § 44-1991 is Arizona's primary securities fraud statute. The
15 Division makes no attempt to argue the subject claim does not sound in fraud. *See* Response,
16 generally. Rather, the Division argues Ariz.R.Civ.P. Rule 9(b)'s heightened pleadings standard
17 "does not apply to this case." *Id.* at p. 4. Specifically, the Division argues the administrative
18 action is governed by the Arizona Administrative Code (Title 14, Chapter 3, Article 1 and Title 14,
19 Chapter 4, Article 3), and the Arizona Rules of Civil Procedure apply only if procedures are not
20 otherwise set forth by law, by the Commission's Rules, or by regulations or orders of the
21 Commission. *Id.*; *citing* Rule R14-3-101(A).

22 R14-3-101(A) provides that "[e]xcept as may be otherwise directed by the Commission,
23 and when not in conflict with law or the regulations or orders of this Commission, these Rules of
24 Practice and Procedure shall govern in all cases before the Corporation Commission" The
25 Rule goes on to state that "[i]n all cases in which procedure is set forth by neither law, nor by
26 these rules, nor by regulations or orders of the Commission, the Rules of Civil Procedure as
27 established by the Supreme Court of the [S]tate of Arizona shall govern." *Id.* (emphasis added).

1 Here, the procedures applying to the pleading requirements of securities fraud claims are
2 set forth by the law. The Division simply chooses to ignore the fact case law has expressly and
3 unambiguously recognized that Rule 9(b), regardless of whether it is a motion to dismiss under
4 state or federal Rule 9(b)(as the two rules are identical), applies in all averments of fraud. Thus,
5 without limitation, Rule 9(b)'s heightened pleading standard applies to this case *via* uncontroverted
6 case authority.

7 In *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S.Ct. 2499, 2507-08 (2007), the United
8 States Supreme Court recognized that "Rule 9(b) applies to 'all averments of fraud or mistake'; it
9 [9(b)] requires that the 'circumstances constituting fraud . . . be stated with particularity' but
10 provides that '[m]alice, intent, knowledge, and other conditions of mind of a person, may be
11 averred generally.'" The *Tellabs* decision involved a securities fraud claim under Section 10(b),
12 but the Court's recognition of 9(b)'s application in all averments of fraud was not qualified or
13 linked exclusively to Section 10(b) claims, or to only private and non-administrative matters. *Id.*;
14 *see also Desaioudar v. Meyercord*, 223 F.3d 1020, 1022-23 (9th Cir. 2000)(where Ninth Circuit
15 held the plaintiff's second amended complaint "clearly sounds in fraud" and, therefore,
16 Fed.R.Civ.P. 9(b) required plaintiff to plead its case with high degree of meticulousness.); *Yourish*
17 *v. California Amplifier*, 191 F.3d 983, 999 (9th Cir. 1999)(where Ninth Circuit noted applicability
18 of Rule 9(b) to securities fraud claims).

19 In *Orthologic Corp. v. Columbia/HCA Healthcare Corp.*, No. CIV 01-0006-PHX-SRB,
20 2002 WL 1331735 at *2 (D.Ariz. Jan. 7, 2002), the Arizona District Court was confronted with a
21 Fed.R.Civ.P. 12(b)(6) and 9(b) motion to dismiss A.R.S. § 44-1991 state securities fraud claims,
22 common law fraud claims and a Section 10(b) federal securities fraud claim. The District Court
23 noted the Federal Rules of Civil Procedure generally require a "short and plain statement of the
24 claim showing that the pleader is entitled to relief." *Id.* (citing Fed.R.Civ.P. Rule 8). "For claims
25 involving fraud, however, Rule 9(b) poses additional pleading requirements." *Id.*

26 Importantly, the Arizona District Court stated that to meet Rule 9(b)'s particularity
27 requirement, "a plaintiff must set forth more than neutral facts necessary to identify the transaction

1 . . . [t]he plaintiff must set forth what is false or misleading about the statement, and why it is
2 false.” *Id.* “A plaintiff pleading fraud against multiple defendants must provide reasonable notice
3 to each defendant of the conduct alleged to constitute fraudulent behavior. *Id.* (citing *Brooks v.*
4 *Blue Cross and Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1381 (11th Cir. 1997). In granting the
5 motion to dismiss as to Defendant Galen in that matter, the District Court noted plaintiff failed to
6 meet Rule 9(b) requirements regarding the A.R.S. § 44-1991 claim because plaintiff failed to
7 provide sufficient facts to discern whether Defendant Galen made or adopted any of the alleged
8 misrepresentations. *Id.* at * 3-4.

9 In *AGA Shareholders, LLC, v. CSK Auto, Inc.*, No. CV-07-0062-PHX-DGC, 2007 WL
10 2320532 at *3 (D.Ariz. Aug. 10, 2007), the Arizona District Court recognized that in addition to
11 the 9(b) pleading requirements recognized in *Orthologic Corp.* and *Yourish*, “[a] plaintiff must
12 also ‘state the time, place, and specific content of the false representations as well as the identities
13 of the parties to the misrepresentations.’” *Id.* (citing *Orthologic Corp.*, 2002 WL 1331735 at *2;
14 *Yourish*, 191 F.3d at 993); see also *Schreiber Distrib. Co. v. ServWell Furniture Co.*, 806 F.2d
15 1393, 1401 (9th Cir. 1986); *Vess v. Ciba-Geigy Corp., USA*, 317 F.3d 1097, 1103 (9th Cir.
16 2003)(“Averments of fraud must be accompanied by the who, what, when, where, and how of the
17 misconduct charged.”); *Lancaster Cmty. Hosp. v. Antelope Valley Dist.*, 940 F.2d 397, 405 (9th
18 Cir. 1991)(Rule 9(b) “requires a pleader of fraud to detail with particularity the time, place, and
19 manner of each act of fraud, plus the role of each defendant in each scheme.”).

20 In *AGA Shareholders*, the Arizona District Court also held that “Plaintiff’s averments of
21 fraud do not comport with the particularity requirement of Rule 9(b) . . . [i]n many instances the
22 Complaint entirely fails to allege the role of each Defendant in the fraudulent scheme, instead
23 alleging that fraud was committed by ‘[the Defendants].’” *Id.* The District Court noted the “Ninth
24 Circuit has allowed group pleading in the corporate fraud context when the ‘complaint provid[ed],
25 in nineteen separate paragraphs, the date of each of these publications, specific descriptions of the
26 representations made, the reasons for their falsity, and, where possible, the role of the individual
27 defendants in preparation and dissemination.” *Id.*; citing *Blake v. Dierdorff*, 856 F.2d 1365, 1369

1 (9th Cir. 1988). Because plaintiff failed to allege sufficient details about the allegedly fraudulent
2 actions of any individual defendant, the Court disregarded all averments of fraud in plaintiff's
3 tortious interference allegations (there were not specific securities or common law fraud claims
4 alleged by plaintiff in that case). *Id.*

5 In light of the foregoing, it is undeniable that the Supreme Court, the Ninth Circuit and
6 Arizona courts have recognized the applicability of Rule 9(b) where securities fraud claims are
7 asserted.

8 However, the Division also argues, without cite to authority, that after the Private Securities
9 Litigation Reform Act of 1995 was enacted, the Arizona legislature only amended A.R.S. §
10 44-2082 to match the heightened pleading requirements of the Act. Response at p. 5. According to
11 the clairvoyant Division, this somehow means the Arizona legislature intentionally did not extend
12 the particularity pleading requirements to allegations of fraud under A.R.S. § 44-1991. *Id.* The
13 Administrative Law Judge is asked to infer the Division need only notice plead its securities fraud
14 claims.

15 Once again, prior to the PSLRA the sufficiency of a complaint for securities fraud was
16 governed by Rule 9(b), and that Rule applies to all averments of fraud or mistake. *Tellabs*, 127
17 S.Ct. at 2507-08. Rule 9(b) requires the circumstances constituting fraud to be stated with
18 particularity, but allegations regarding state of mind (malice, intent, knowledge, and the like) may
19 be averred to generally. *Id.* The Supreme Court, in *Tellabs*, noted the PSLRA further heightened
20 the minimum securities fraud pleading requirements contained in 9(b). *Id.* In particular, the
21 pleading requirements on mental aspects of securities fraud claims under §10b, were increased to
22 require in any private securities complaint alleging a defendant made a false or misleading
23 statement to "state with particularity facts giving rise to a strong inference that the defendant acted
24 with the requisite state of mind." *Id.* (additional citations omitted).

25 Simply put, the PSLRA did not diminish or eliminate the minimum pleading standards in
26 all fraud cases, which are contained in Rule 9(b). Rather, the PSLRA heightened pleading
27 standards in private actions. Rule 9(b) was, and is, in full force and effect with regard to all

1 averments of fraud—including the Division’s securities fraud claim under A.R.S. § 44-1991. The
2 Division’s argument is a red herring.

3 The Division also cites *Trimble v. American Sav. Life Ins. Co.*, 152 Ariz. 548, 552-53 (App.
4 1986), for the proposition that notice pleading is sufficient. Response at p. 7. *Trimble* does not
5 hold notice pleading of securities fraud claims under A.R.S. § 44-1991 is appropriate. The *Trimble*
6 court indicated that where plaintiffs are so numerous as to make it infeasible to determine reliance
7 or where the claim is based on an omitted material fact, courts may find constructive reliance. *Id.*
8 There is no allegation here that investors are so numerous constructive reliance should apply in this
9 action. *See* Notice, generally. The *Trimble* court also indicated materiality and causation may be
10 determined by an objective reasonable person test. *Trimble*, 152 Ariz. at 552-53. However, the
11 decision in no way removes the requirement that all allegations of fraud, including allegations of
12 material misstatements or material omissions, be alleged in conformance with 9(b). The Division’s
13 overly-broad, non-specific and conclusory fraud allegations do not satisfy 9(b)’s requirements.

14 Thus, the Division’s argument that 9(b) is inapplicable and that there is no authority for the
15 proposition that its securities fraud claims require more than notice pleading must be rejected.²
16 Respondents’ Motion should be granted, or the Division should be ordered to amend its Notice to
17 conform to 9(b).

18 **B. Arizona Rules of Civil Procedure Apply in This Case.**

19 Case law mandates the application of 9(b) in this administrative action. As such, the
20 Division must satisfy 9(b)’s heightened pleading requirements, which it has failed to do.
21 Nonetheless, to the extent the Administrative Law Judge disagrees that the foregoing Supreme
22 Court, Ninth Circuit and Arizona case authority establishes the applicability of 9(b) in this case,
23

24
25 ² The Division argues that where a complaint alleges violations of the antifraud provisions of the Securities Act, a
26 plaintiff need not establish the presence of the nine elements of *common law fraud*. Response at p. 5, *citing* *Rose v.*
27 *Dobras*, 128 Ariz. 209, 214 (App. 1981); *State v. Superior Court of Maricopa County*, 123 Ariz. 423 (1979). That is
because a claim for securities fraud under A.R.S. § 44-1991 is a *statutory claim*, which has its own separate set of
elements that must be properly plead and ultimately established. The Division’s argument is entirely irrelevant to the
issue of whether it must satisfy Rule 9(b)’s pleading requirements under A.R.S. § 44-1991. As discussed above, case
authority requires the application of 9(b) to all claims of fraud, including securities fraud under A.R.S. § 44-1991.

1 which ruling the Administrative Law Judge should not reach, the Administrative Rules are silent
2 on the pleading requirements for securities fraud claims brought under A.R.S. § 44-1991.

3 As discussed above, R14-3-101(A) provides that “[i]n all cases in which procedure is set
4 forth by neither law, nor by these rules, nor by regulations or orders of the Commission, the Rules
5 of Civil Procedure as established by the Supreme Court of the [S]tate of Arizona shall govern.” *Id.*
6 Thus, any gap in the procedural requirements regarding how a complaint alleging securities fraud
7 under A.R.S. § 44-1991 must be plead should be resolved through the application of Ariz.R.Civ.P.
8 Rule 9(b). The reason for this is simple. The Division’s A.R.S. § 44-1991 claim is a fraud claim.
9 Rule 9(b) expressly states expressly states, “[i]n all averments of fraud or mistake, the
10 circumstances constituting fraud or mistake shall be stated with particularity.” *See*
11 Ariz.R.Civ.P. 9(b)(emphasis supplied). As such, the Division should be required to satisfy Rule
12 9(b) because: (A) case law expressly requires so; and (B) the Arizona Rules of Civil Procedure,
13 here Rule 9(b), should be applied to plug a gap in the Administrative Rules regarding pleading
14 requirements for state securities fraud claims.

15 The Division cites R14-4-306 for its hypothesis that the Division need not abide by Rule
16 9(b)’s pleading requirements, but rather it must only provide notice to the opposing party of the
17 “nature of the claim.” Response at p. 6. R14-4-306 literally does not have the word “claim”
18 anywhere in its text. There is no reference to any statutory or rule based theory of liability, let
19 alone an expression or hint of what must be alleged in a securities fraud claim under A.R.S. §
20 44-1991. The Rule is entitled, “Notices Regarding Hearings,” and merely indicates the
21 Commission “may” issue a notice of hearing to determine whether an order authorized under
22 Arizona’s Securities Act should issue. *Id.* R14-4-306 goes on to reference service requirements
23 and timing of hearings. *Id.* Importantly, the Division admits there is no Arizona case authority
24 defining the content of a Notice under Rule 14-4-306. Response at p. 7. This is a stark concession
25 that there is a gap in the Administrative Rules that must be filled through application of Rule 9(b).
26 Simply put, R14-4-306 is not a basis to avoid the grant of the Motion.

1 The Division then attempts to support its argument that R14-4-306 merely requires notice
2 pleading by referring to rules outside of the Rules of Practice and Procedure before the
3 Commission. Specifically, the Division argues the Arizona Administrative Procedure Act should
4 apply to fill the procedural gap in the Rules of Practice and Procedure before the Commission.
5 Response at p. 4. It cites A.R.S. § 41-1061(A)(4) in support of this argument. A.R.S. §
6 41-1061(A)(4) actually supports the Respondents' position that more than mere notice pleading is
7 required. The Section does not specifically provide a procedure for pleading securities fraud under
8 A.R.S. § 44-1991 and, thus, there remains a gap in the Administrative Rules that must be filled
9 through application of 9(b). Specifically, the Section does indicate that more than mere notice
10 pleading is required.

11 Indeed, A.R.S. § 41-1061(A)(4) requires that in a contested case, all parties should be
12 afforded an opportunity for hearing after reasonable notice, and that notice shall include, *inter alia*,
13 a short plain statement of the matters asserted. This, conveniently, was the only part of A.R.S. §
14 41-1061(A)(4) the Division noted in its Response. However, the Section further provides, "[i]f the
15 agency or other party is unable to state the matters in detail at the time the notice is served, the
16 initial notice may be limited to a statement of the matters involved." *Id.* However, "[t]hereafter
17 upon application a more definite and detailed statement shall be furnished." *Id.* (emphasis
18 supplied) Thus, if the Division was unable to state matters in detail at the time the Notice was
19 served, presumably because of a lack of evidence, then the agency (here the Division) may initially
20 provide a short plain statement of the matters asserted. *Id.* However, "upon application" the
21 Division "shall" furnish a more definite and detailed statement. *Id.* If A.R.S. § 41-1061(A)(4)
22 does apply, Respondents' Motion undeniably constitutes an application for a more definite and
23 detailed statement, which the Division must provide.

24 Amazingly, the Division then argues that while they do not apply in this case, the Arizona
25 Rules of Civil Procedure and the Federal Rules of Civil Procedure actually support their notice
26 pleading theory. Response at p. 6 (footnoting Fed.R.Civ.P. Rule 8 which requires a short plain
27 statement of the claim). The Supreme Court has stated that sufficiency of a complaint for

securities fraud is not governed by Rule 8, “but by the heightened pleading standard set forth in Rule 9(b).” *Tellabs*, 127 S.Ct. at 2507. The Division’s reliance on A.R.S. § 41-1061(A)(4) as well as the federal and civil rules of procedure, thus, only serve to enhance Respondents’ Motion.

Similarly, the Division’s reliance on R14-3-101(B) and R14-3-106(E) is misguided, as these Rules also support the application of 9(b). R14-3-101(B) indicates the Commission’s Rules shall be liberally construed to secure “the *just* and *speedy* determination of all matters presented to the Commission.” (Emphasis supplied). R14-3-106(E) provides “formal documents will be liberally construed and defects *which do not affect substantial rights of the parties* will be disregarded.” (Emphasis supplied).

First, these Rules do not provide a pleading standard for securities fraud under the Administrative Rules. Thus, the Rules only support the Respondents’ position that there is a gap in the Administrative Rules regarding pleading requirements for securities fraud matters that must be filled through application of 9(b).

Second, and equally important, the Division is seeking from Michael Sargent and Peggy Sargent in excess of \$5.6 million in rescission, restitution and/or penalties. Notice at pp. 3 and 6. These Respondents face the stigma of a government action involving allegations of fraud against them. The Division’s argument that Respondents’ “substantial rights” are not affected is simply laughable.

A “just” determination of these matters necessarily requires more than mere notice pleading. A “just” action holds the Division to the pleading requirements of 9(b), which Rule expressly states the bare minimum threshold of pleading standards in all averments of fraud, and compels more than a modicum of specificity such that a Respondent can actually understand exactly what he or she is alleged to have done wrong. Further, this action can be brought to a much speedier resolution—whether through hearing or settlement—if the Division simply amends its Notice to provide the required level of specificity. A Notice that actually identifies with specificity the Respondents purported wrongdoing will expedite this action because the Parties will not have to guess at the claims and defenses, and the discovery process will be much smoother.

1 **C. The Standard of Review.**

2 The Division correctly notes that in deciding 12(b)(6) and 9(b) motions to dismiss the court
3 must view the complaint as a whole to determine whether a claim for fraud has been stated.
4 Response at p. 2; *citing Albers v. Edelson Tech. Partners L.P.*, 201 Ariz. 47, 51-52 (App. 2001).
5 Facts, "as alleged therein" must be presumed to be true. *Id.* However, there is a substantive
6 difference between examining allegations actually contained in the complaint (here the Notice) and
7 the Division's manufacturing of allegations not contained in the Notice in order to avoid dismissal
8 *via* its Response.

9 The Division has asserted no specific allegation against Michael Sargent or Peggy Sargent
10 outside the context of other Respondents' alleged actions. *See* Notice, generally. Rather, the
11 Division generically and broadly pleads Respondents' alleged collective violations. *Id.* In the
12 Response, the Division literally asks the Administrative Law Judge to disregard its broad
13 allegations against the Respondents' as a whole and simply insert "Sargent" for the purposes of
14 evaluating whether it has stated a claim or complied with Rule 9(b). Response at p. 2, l. 19 to p. 4,
15 l. 2. The Administrative Law Judge cannot permit the Division to substitute imaginary allegations
16 not contained in the Notice through a Response to a Motion to Dismiss.

17 If the Division has evidence and a good faith basis to allege Sargent personally offered and
18 sold securities on behalf of Mark Bosworth & Associates, L.L.C. and 3GMI to at least 31 investors
19 who paid Sargent at least \$5,600,000 the Notice should so state to comply with Rule 9(b); it does
20 not so state. The same holds true for the other allegations that morph from non-specific allegations
21 in the Notice to specific allegations against Mr. Sargent in the Response. If the Division does not
22 have evidence and a good faith basis to make such specific allegations against Mr. Sargent and
23 Mrs. Sargent in its Notice, the Division should consider a review of Ariz.R.Civ.P. Rule 11, and
24 dismiss these Respondents.

25 Under 9(b) and relevant authority interpreting same, Mr. Sargent and Mrs. Sargent are
26 entitled to know the time, place, and specific content of false representations allegedly attributed to
27 them, as well as the identities of the parties to same. *Yourish*, 191 F.3d at 993; *Schreiber Distrib.*

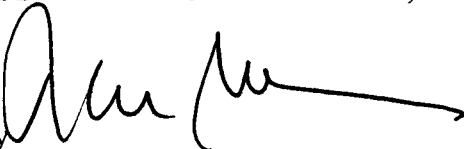
Co., 806 F.2d at 1401; *Vess*, 317 F.2d at 1103; *In re White Electronic Designs Corp. Sec. Lit.*, 416 F.Supp.2d 754, 761-62 (D.Ariz. 2006); *AGA Shareholders*, 2007 WL 232053 at *3; *Orthologic Corp.*, 2002 WL 1331735 at *2. The Division's averments of fraud against Mr. Sargent and Mrs. Sargent must be accompanied by the who, what, when, where, and how of the misconduct charged. *Lancaster Cmty. Hosp.*, 940 F.2d at 405. The Division fails miserably to comply with these pleading requirements in its Notice, and cannot attempt to correct same through its Response. The proper course of action is to order the Division to amend its Notice to comply with 9(b), or to dismiss the action under 12(b)(6) because the Division failed to comply with 9(b).³

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that their Rule 12(b)(6) Motion to Dismiss be granted, and the Administrative Law Judge issue a recommended Order that the alleged violations of A.R.S. § 44-1991 be dismissed or, in the alternative, require the Division to file an amended Notice conforming to the requirements of Rule 9(b).

RESPECTFULLY SUBMITTED this 17th day of September, 2008.

ROSHKA DeWULF & PATTEN, PLC

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³ The Division attempts to justify its unmeritorious argument that notice pleading is sufficient by citing Arizona's control person liability statute, which is A.R.S. § 44-1999. The Division's Notice contains no control person liability claim under that statute. The same is true for the Division's argument that A.R.S. § 44-2003(A) applies. There are no allegations that give rise to claims of participatory liability. The arguments are irrelevant.

1 ORIGINAL and thirteen copies of the foregoing
2 filed this 17th day of September, 2008 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered
8 this 17th day of September, 2008 to:

9 Marc E. Stern, Administrative Law Judge
10 Hearing Division
11 Arizona Corporation Commission
12 1200 West Washington Street
13 Phoenix, Arizona 85007

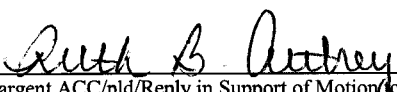
14 Aaron S. Ludwig, Esq.
15 Securities Division
16 Arizona Corporation Commission
17 1300 West Washington Street, 3rd Floor
18 Phoenix, Arizona 85007

19 Copy of the foregoing mailed
20 this 17th day of September, 2008 to:

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